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APR 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 30, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: PR Docket No. 89-552
Reply Comments of ComTech Communications, Inc.

Dear Mr. Caton:

Transmitted herewith, on behalf of ComTech Communications, Inc., are an original and nine copies of its Reply Comments in the above-referenced proceeding.

Should there be any questions concerning this transmittal, please do not hesitate to contact the undersigned.

Sincerely,

Russ Taylor
Russ Taylor

Enclosures

93-253

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APR 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Part 90 of the Commission's
Rules to Provide for the Use of the 220-222
MHz Band by the Private Land Mobile Radio
Service

PR Docket No. 89-552

Implementation of Sections 3(n) and 332 of the
Communications Act

GN Docket No. 93-252

Regulatory Treatment of Mobile Services

Implementation of Section 309(j) of the
Communications Act -- Competitive Bidding

PP Docket No. 93-253

To: The Commission

Reply Comments of ComTech Communications, Inc.

ComTech Communications, Inc. ("ComTech" or the "Company"), by its attorneys, pursuant to the provisions of Section 1.415 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby submits reply comments responding to certain comments filed with the Commission in the above-captioned proceeding on April 15, 1997.

I. Introduction

On April 15, 1997, ComTech submitted its comments in response to the

Commission's Fifth Notice of Proposed Rule Making in the above-captioned proceeding.^{1/} In its comments, ComTech explained that its affiliate holds a Phase I nationwide authorization. ComTech further demonstrated that it is a committed participant in the 220 MHz marketplace. ComTech urged the Commission to adopt rules governing disaggregation and partitioning that permit Phase I nationwide licensees the greatest possible flexibility in operating their systems, so that they may serve the public in the most effective manner. Other entities submitted comments that, in ComTech's opinion, would unnecessarily restrict nationwide licensees from using their spectrum in the most flexible manner. ComTech is therefore pleased to submit these reply comments.

II. Reply Comments

A. *Phase I Nationwide Buildout Requirements Should Not Be Altered*

The Fifth Notice questions whether Phase I nationwide licensees should be permitted to partition their nationwide service areas. The Fifth Notice also seeks comment on the construction requirement to be imposed on Phase I nationwide licensees and partitionees if such partitioning is permitted. In its comments, ComTech proposed that the original Phase I licensee, together with the partitionee, be jointly responsible for meeting the construction requirements of Section 90.725 of the Commission's rules. ComTech noted that expediting service to the public was the Commission's primary goal in adopting construction

^{1/} *In the Matter of Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, Third Report and Order and Fifth Notice of Proposed Rule Making, FCC 97-57, released March 12, 1997 ("Fifth Notice"). The Fifth Notice generally solicits comment on proposed rules designed to permit partitioning and disaggregation for 220 MHz SMR licensees.

requirements. As a consequence, ComTech reasoned that the Commission should be indifferent how the construction requirements are met, provided that service to the public results. Accordingly, ComTech proposed an administratively desirable scheme that affords Phase I nationwide licensees the benefits of partitioning,^{2/} without creating an undue regulatory burden for the Commission.

The logic contained in ComTech's proposal for Phase I nationwide partitioning was supported by Global Cellular Communications, Inc. ("Global"), a Phase I nationwide licensee. Global urged the Commission to adopt flexible policies which permit parties to a partitioning agreement to "allocate between them" the construction obligations. Global further commented that, at the six and ten-year benchmarks, the Commission should evaluate each party's construction efforts individually. Another nationwide licensee, Rush Network Corp. ("Rush") suggested that the Commission's overdramatization of the differing Phase I and Phase II nationwide construction requirements unfairly leads to a conclusion that partitioning is problematical for Phase I licensees. Rush supports partitioning for Phase I nationwide licensees.

The American Mobile Telecommunications Association, Inc. ("AMTA") also supports permitting Phase I nationwide licensees to partition their service areas. However, AMTA

^{2/} Section 309(j)(6)(D) of the Communications Act prohibits the Commission from permitting Phase II nationwide licensees to partition, while denying that same benefit to similarly situated Phase II licensees. Because the Commission adopted partitioning for Phase II nationwide licensees, it must amend its Phase I nationwide licensing rules in whatever manner is practical so that Phase I nationwide licensees receive the same benefit. 47 U.S.C. § 309(j)(6)(D) (1996). Simply maintaining a differing regulatory approach for the Phase I nationwide licensees and using that difference to justify disparate treatment denies those entities the protections against discrimination that Congress deemed appropriate when it authorized the FCC to award licenses through competitive bidding.

urged the Commission to radically change the construction requirements for Phase I licensees who decide to partition by “converting” the construction requirement from a site-specific basis to a population basis. ComTech disagrees with AMTA’s approach. Unlike other commenters, AMTA does not consider that both the original licensee and the partitionee could be held jointly responsible for meeting existing construction benchmarks. Yet, AMTA’s approach would change the licensees construction requirements^{3/} and could possibly create a confusing system whereby the Commission would be required to administer two types of construction obligations for Phase I Nationwide Licensees, one for those licensees that do not partition (site-specific based) and one for those licensees that decide to partition (population based). Therefore, ComTech urges the Commission to retain its current construction requirements.

ComTech’s recommendation would permit licensees to retain their current market-by-market construction plans, while allowing the public to be served by the partitioning of spectrum where licensees do not intend to construct immediately. Licensees have deployed business plans that are premised on market-by-market (as opposed to geographic or population based) coverage requirements. It would be contrary to the public interest to require nationwide licensees to abandon those construction plans in order to partition spectrum. In addition, ComTech’s plan would also retain a single construction standard, instead of

^{3/} ComTech would expect that, since the licensee would have new construction requirements under AMTA’s proposal, the licensee would also be deemed to have a new “initial license grant” date (issued concurrently with the partitioned license), for purposes of determining compliance with the new construction requirements. Likewise, the partitionee would construct under the same schedule as the licensee.

imposing multiple construction requirements on different Phase I nationwide licensees, depending upon their elected approach.

B. Partitioning and Disaggregation Should Be Permitted Immediately

In its comments, ComTech urged the Commission to permit Phase I nationwide licensees to partition immediately, noting that the purpose of a construction requirement is to foster service to the public. ComTech demonstrated that permitting partitioning before the four-year benchmark would likely speed service to the public. AMTA opposes permitting the licensee to partition before the fourth-year benchmark is met, claiming that the meeting four-year benchmark first establishes a “level of commitment” by the licensee. With the adoption of ComTech’s partitioning proposal, the licensee and partitionee(s) would still be collectively accountable to meet the existing benchmarks. Therefore, the “level of commitment” will remain the same. Further, the Commission permits other commercial mobile radio service licensees, including Phase II licensees, to partition at any time because it recognizes that such flexibility would bring service to rural areas sooner and encourage efficient use of spectrum.^{4/} This same logic applies to Phase I nationwide licensees. Therefore, partitioning and disaggregation should be permitted immediately.

^{4/} The Commission’s analysis in this regard is correctly focused on the provision of service to the public, not speculation concerning a licensee’s incentives premised upon how the license was obtained. To justify differing regulatory treatment, the Commission must identify tangible differences between Phase I and Phase II licensee, not casual observations concerning incentives.

III. Conclusion

WHEREFORE, THE PREMISES CONSIDERED, ComTech Communications, Inc. submits the foregoing reply comments and urges the Commission to act in a manner consistent with the views express herein.

Respectfully submitted,

COMTECH COMMUNICATIONS, INC.

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Dated: April 30, 1997

CERTIFICATE OF SERVICE

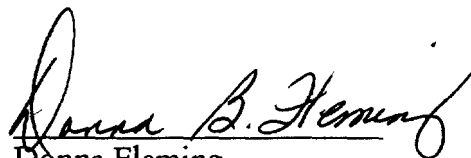
I, Donna Fleming, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 30th day of April, 1997, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing Reply Comments to the following:

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